SEBANON HASSAN & ANOR.

v.

ANG KA KIAL & ANOR. & OTHER CASES

HIGH COURT MALAYA, JOHOR BAHRU
LC VOHRAH J
[CIVIL SUIT NOS. 115, 116 AND 117 OF 1980]
17 MARCH 1988

TORT: *Negligence - Collision between motor car and lorry - In middle of road - Presumption that both drivers equally liable - Driver of motor car and two passengers died - Dependency claim - One passenger sustained injuries - Swollen cheeks, lacerations, abrasions, injury to teeth and fracture of maxilla.*

The plaintiffs in the three consolidated suits claimed damages as dependents of three deceased who were killed in an accident between a motor car and a motor-lorry. One of the deceased was the driver of the motor-car. The other two deceased were passengers in the motor-car. The vehicles were travelling in opposite directions. Broken glass pieces were found scattered over a wide area on either side of the white line in the middle of the road. Each vehicle came to a stop on its correct side of the road. The first defendant who was the driver of the motor-lorry made a police report but he did not give evidence.

The deceased in the first suit earned an income of RM700 per month as a stall owner. He was 42 years at the time of his death. He contributed RM400 for household expenses. His widow remarried. He had five children.

The second plaintiff in the first suit sustained injuries in the collision viz. swelling of the cheeks, one inch laceration below the lower lip, abrasions on the forehead and nose, wounds in the sulceus, loss of teeth and fracture of teeth and fracture of the maxilla.

The deceased in the second suit ferried passengers to islands as a living. He contributed RM600 per month to his family. He was 35 years at the time of his death. His widow remarried. He had two children.

The deceased in the third suit also earned a living by ferrying passengers to islands and supplying food to Vietnamese refugees. He was 32 years at the time of his death. He contributed RM600 to his family monthly. His widow re-married. He had three children.

Held:

[1] The first defendant was 50% liable for the accident. From the evidence, it could be inferred that the collision took place in the middle of the road. Thus, there was a presumption that both drivers were negligent. The defendants had to pay half of the general and special damages awarded.

[2] Damages in the sum of RM24,785 was awarded as loss of dependency to the widow and five children of the deceased in the first suit with interest at 4% per annum on the sum of RM17,695 from the date of accident to the date of the trial. Special damages in the sum of RM4,568 was awarded for funeral expenses and repairs to the car with interest at 4% per annum from the date of accident.

[3] General damages in the sum of RM21,000 was awarded to the second plaintiff in the first suit for the injuries sustained with interest at 8% per annum from the date of service of the writ.

[4] Damages in the sum of RM63,160 was awarded as loss of dependency to the widow and two children of the deceased in the second suit and interest at 4% per annum on the sum of RM50,360 from the date of accident until the date of trial. A sum of RM580 per month was awarded to the widow and her two children up to the time of re-marriage. Special damages in the sum of RM1,500 was awarded for funeral expenses with interest at 4% per annum from the date of accident.

[5] Damages in the sum of RM83,420 was awarded as loss of dependency to the widow and children of the deceased in the third suit with interest at 4% per annum on the sum of RM46,420 from the date of accident until the date of trial. Special damages in the sum of RM1,500 was awarded for funeral expenses with interest at 4% per annum from the date of accident.

[Plaintiffs claim allowed with costs to be taxed.]

Cases referred to:
Chong Khee Sang v. Pang Ah Chee [1984] 1 MLJ 377
Ong Yam Chong & Anor. v. Chan Wah [1962] 28 MLJ 184
Mead v. Clark Chapman & Co. Ltd. [1956] 1 All ER 44
Lee Thiam v. Fatimah Binte Salleh [1981] 1 MLJ 285

For the plaintiff - Ho Thian Cheh; M/s. Ho Thian Cheh & Co.
For the defendants - L.K. Shu; M/s. V.P. Nathan & Partners

JUDGMENT

LC Vohrah J:

I have found on the evidence presented, oral and documentary, the following facts either undisputed or proved. On 16 April 1978 at about the 3rd milestone Kuala Rompin - Endau Road, a collision took place between motor-car JW9535 driven by Md. Jalil bin Bagok (deceased) and motor Lorry JV 109 driven by the first defendant. The two vehicles were travelling in opposite directions. As a result of the accident Md. Jalil and two of the three passengers in the car, namely Jaya Putera @ Aziz bin A. Rahman and Lazi bin Md. Nor died, and each vehicle came to a stop on its correct side of the road. Broken glass pieces were found by the investigating officer to be scattered over a wide area on either side of the white line running along the middle of the road.

It is the plaintiffs' case in these three consolidated suits that they have proven on a balance of probabilities that the first defendant was negligent in the driving of the lorry resulting in the collision. The only surviving passenger of the car PW3 was not able to explain how the accident occurred as he was asleep at the time. The driver of the lorry who survived the accident and could have given an eye-witness's account of the collision was never produced although several postponements were granted to the defence in order to enable it to procure his attendance in Court. Although there is a copy of the police report made by the first defendant in the agreed bundle of documents ABVI 1-14. I cannot, in the absence of any specific admission by the plaintiffs, accept the report as affording proof of the truth of its contents: *Chong Khee Sang v. Pang Ah Chee* [1984] 1 MLJ 377. I would in fact go so far as to say that as the report was made by an interested party who must have foreseen that legal proceedings would be instituted, it must *prima facie* be viewed with circumspection. In the circumstances, in the absence of any evidence as such of an eye-witness as to how the accident came about and in the light of the documentary evidence showing broken glass

pieces scattered over the middle of the road indicating that the collision must have taken place somewhere in the centre of the road, there is, on the authority of *Ong Yam Chong & Anor. v. Cham Wah* [1962] 28 MLJ 184, a presumption that the driver of the car and the driver of the lorry were both negligent. As I have found no evidence to rebut that presumption I think justice would be served in this case if I found the first defendant 50 per cent to blame for the collision and I so find.

I shall now deal with the quantum of the damages to be awarded in each suit.

Civil Suit No. 115 Of 1980
First Plaintiff:

I accept the evidence of the deceased's wife (PW1) that her deceased husband Md. Jalil earned an average income of RM700 per month with her help running a stall selling vegetables, fruit and fish, and that he gave her RM400 for household expenses to feed the deceased, herself and five of their children. She stated that the deceased had all his meals at home and that her estimation of the cost of the food for the deceased was RM6 per day. I would accordingly estimate the loss suffered by her and the five children at RM220 per month up to the time of her re-marriage on 13 August 1979 when her support would have become the responsibility of her new husband. Thereafter I would allow loss of dependency in respect of the five children on the authority of *Mead v. Clark Chapman & Co. Ltd.* [1956] 1 All ER 44 as the defence has not proved that the children have ceased to be dependents in consequence of their mother's remarriage. Discounting her dependency, I would estimate the loss of dependency to the five children at RM150 per month. As the deceased was 42 years of age at the time of his death. I would consider on the authority of *Lee Thiam v. Fatimah binte Salleh* [1981] 1 MLJ 285, that a purchase of 14 years after making allowance for all necessary contingencies to be fair and reasonable. I would accordingly award damages as follows:

(a) Loss of dependency in respect of PW1 and their 5 children at RM220 per month from the death of the deceased on 16 April 1978 to PW1's re-marriage on 13 August 1979, a period of 16 months; ..	RM3,520 at 4% interest from the date of the accident.
(b) Loss of dependency in respect of the five children at RM150 per month from the date of PW1's re-marriage on 13 August 1979 to the date of trial on 27 June 1987, a period of 94 ½ month:	RM14,175 at 4% interest from the date of the accident.
(c) Loss of dependency in respect of the five children for the post-trial period i.e., the remaining period of 4 ½ years at RM150 per month:	RM7,090.

Although no evidence was furnished as proof of expenses incurred for the accused's funeral and for the repairs to the car involved in the accident, there can be no doubt that such expenses were incurred and I would allow the prevailing standard sum of RM1,500 for funeral expenses and the sum of RM3,068 for repairs to the car as evidenced by the receipt in ABII-3, making a total of RM4,568 which sum will be bear interest at the rate of 4% per annum from the date of the accident.

Second Plaintiff:

PW3 suffered the following injuries as specified in ABI-8 namely:

(1) Swelling of the left and right cheeks extending from the lower borders of the eyes to the lower borders of the mandible.

(2) 1 inch laceration below the lower lip.

(3) Abrasions:

(a) 2 inch long on left side of forehead.

(b) right side of face lateral to bridge of nose.

(4) Through & through wounds in the sulcus 3/- /1

(5) Injury to teeth:

(a) loss of tooth -/7

(b) fracture of teeth - 1/1 / 2/1

(6) Fracture of the maxilla:

(a) Le F'orte I

(b) Mid-line fracture of palate.

I would award the second plaintiff the global sum of RM21,000 as general damages for all his injuries. This sum will carry interest at the rate of 8% from the date of the service of the writ.

Civil Suit No. 116 Of 1980:

Again, I accept the evidence of the deceased's wife (PW4) that the deceased Jaya Putera gave her RM600 per month for household expenses in respect of herself, their two children and himself. Her evidence was that he only took breakfast at home whenever he was not away on his chartered trips to the islands with passengers. In a month he would be away for about 20 days so that for 10 days in the month he would have had his breakfast at home. His breakfast was estimated by PW4 to cost her RM2 each time. The cost of his breakfast for the 10 days would have been RM20 so that the loss of dependency to PW4 and the two children would have been RM580 until the time of her re-marriage on 5 June 1983 and thereafter, as in the previous suit, I would estimate the dependency of the two children as suggested by Counsel for the defence at RM300 per month. At the time of his death the deceased was aged 35 years and I consider a multiplier of 18 years to be fair and reasonable. I would therefore award the damages as follows:

(a) Loss of dependency in respect of PW4 and their two children at RM580 per month from the death of the deceased on 16 April 1978 to PW4's re-marriage on 5 June 1983, a period of 62 months:	RM35,960 at 4% interest from the date of the accident.
(b) Loss of dependency in respect of the two children at RM300 per month from the date of PW4's remarriage on 5 June 1983 to the date of trial on 27 June 1987, a period of 48 months:	RM14,400 at 4% interest from the date of the accident.

(c) Loss of dependency in respect of the two children for the post-trial period i.e., the remaining period of 9 years at RM150 per month: RM12,800.

As in the case of the previous suit, I would allow, for the same reason given therein, the sum of RM1,500 as special damages for funeral expenses despite the absence of receipts. This sum will bear interest at the rate of 4% per annum from the date of the accident.

Civil Suit No. 117 Of 1980

Yet again I have no reason whatsoever not to accept the evidence of the wife of the deceased (PW7) that the deceased Lazi bin Md. Nor gave her RM800 per month as household expenses for the maintenance of the whole family consisting of the deceased, PW7 and their three children as the deceased was obviously an enterprising person and earning a very good income. She testified that in a month the deceased was at home for only 6 days at the most, the rest of the days having been spent by him accompanying his tourist passengers in his boats to the offshore islands and supplying food to Vietnamese refugees in that area. She estimated that she spent on him only RM30 per month. Accordingly I would estimate the loss of dependency suffered by her and their three children at RM770 per month up to the date of her re-marriage on 12 October 1978 and thereafter I would estimate the loss of dependency in respect of the three children at RM400 per month especially having regard to their stepfather's indifferent earning capacity. As the deceased died at the age of 32 without realising the full potential of his working life, I think a fair and reasonable multiplier to be accorded in this case, having regard to all contingencies, would be 19 years' purchase. I would accordingly award damages as follows:

(a) Loss of dependency in respect of PW7 and their 3 children at RM770 per month from the death of the deceased on 16 April 1978 to PW7's re-marriage on 12 October 1978, a period of 6 months: RM4,620 at 4% interest from the date of the accident.

(b) Loss of dependency in respect of the three children at RM400 per month from the date of PW7's re-marriage on 12 October 1978 to the date of trial on 27 June 1987, a period of 104 ½ months. RM41,800 at 4% interest from the date of the accident.

(c) Loss of dependency in respect of the three children for the post-trial period i.e., the remaining period of 10 years at RM400 per month: RM37,000.

As in the two previous suits, I would allow the sum of RM1,500 as special damages for funeral expenses and this sum will bear interest at the rate of 4% per annum from the date of the accident.

Since the first defendant has been found to be 50% liable for the accident, the defendants will only have to pay half of the general and special damages awarded in these three suits and also one half of the costs that will be taxed unless the costs are agreed upon.

Also found at [1989] 1 CLJ 509